

PT 01-32

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**SANCTUARY OF
FAITH CHURCH OF
G-D IN CHRIST,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**Nos. 00-PT-0037
(98-16-1221)
(98-16-1237)
P.I.N.S: 16-14-106-017
16-14-106-019**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: These consolidated matters present the limited issue of whether real estate identified by Cook County Parcel Index Numbers 16-14-106-017 and 16-14-106-019¹ were “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) during the 1998 assessment year. The underlying controversies arise as follows:

Applicant filed a two separate Real Estate Tax Exemption Complaints with the Cook County Board of Review (hereinafter the “Board”) on October 7, 1998. The Board reviewed applicant’s complaints and recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that the requested exemptions be denied. On

1. All subsequent references to the individual properties shall be by the last three digits of the parcel index number (i.e. “017” for P.I.N. 16-14-106-017); all subsequent references to the two properties as a collective whole shall be to the “subject properties.”

March 16, 2000, the Department issued two separate determinations finding that the subject properties were not in exempt use.

Applicant filed an appeal as to these denials and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that both of the Department's determinations in these matters be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over these matters and its positions herein, namely that the subject properties are not in exempt use, are established by the admission of Dept. Group Ex. Nos. 1, 2, 3.
2. Parcel 017 is located at 3928 W. Jackson, Chicago, IL and consists of an unimproved lot; Parcel 019 is located at 3918-20 W. Jackson, Chicago, IL 60624 and is likewise unimproved. Dept. Group Ex. No 2; Tr. pp. 16, 17.
3. Applicant, a Pentecostal church affiliated with the National Church of G-D in Christ, obtained ownership of parcel 017 by means of a quitclaim deed dated November 13, 1996 and parcel 019 by means of a quitclaim deed dated December 12, 1995. Applicant Ex. Nos. 1, 2; Tr. p. 8.
4. Applicant purchased the subject properties with the intention of constructing a church complex thereon. However, both properties were completely vacant and unimproved as of their respective purchase dates. Tr. pp. 7, 16.
5. The subject properties remained vacant and unimproved, but were used as community parking lots, throughout the 1998 assessment year.² Tr. p. 20.

2. The uses described in this and all subsequent Findings of Fact shall be understood to be 1998 uses unless context clearly specifies otherwise.

6. Applicant did not have a sign or any other demarcation indicating that the subject properties could only be used as parking for its nearby church, which was located at 3612 W. Jackson.³ Tr. p. 20.
7. Applicant did hold one outdoor prayer service at the subject properties during 1998. Tr. pp. 19-21.
8. Applicant did not hold more frequent prayer services on the subject properties, or take other steps toward developing them for use as a church complex, because its pastor was incapacitated with a serious illness. Applicant did, however, clean, beautify and maintain the subject properties on a regular and continuous basis throughout 1998. Tr. pp. 17-21.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject properties from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et. seq.* Accordingly, under the reasoning given below, the determinations by the Department that said properties do not qualify for such exemption under 35 ILCS 200/15-40 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

3. Applicant did not submit any evidence proving, and my examination of pertinent Departmental records fails to disclose, that applicant's main church was tax-exempt during 1998.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* (hereinafter the “Code”), wherein the following are exempted from real estate taxation:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit ... [.]

35 **ILCS** 200/15-40.

Statutes conferring property tax exemptions are to be strictly construed so that all factual and legal inferences favor taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Consequently, applicant bears the burden of proving that the property it is seeking to exempt falls within the pertinent statutory exemption. *Id.*

Here, the relevant statute requires applicant to prove that it actually used or developed the subject properties for some specifically identifiable purpose that qualifies as “exclusively ... religious” within the meaning of Section 15-40. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was completely vacant throughout the tax year in question held non-exempt); *with*, People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout relevant tax year, held exempt).⁴

As applied to uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and

4. *See also*, Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt).

religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). Furthermore, the word “exclusively” when used in Section 15-40 and other property tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

In Mount Calvary Baptist Church v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998), the court considered whether a church building that had suffered severe structural damage in a fire could qualify for exemption under the then existing version of Section 15-40.⁵ The church had been regularly used for exempt purposes prior to the tax year in question. However, those uses were severely curtailed throughout the relevant period due to damage from the fire. Mount Calvary at 666-670.

The court held the church exempt. In doing so, the court relied on testimony which proved that some of the church’s members would pray at the building during the tax year in question. However, the court was careful to point out that the church was one “which but for the [intervening] fire, presumably would have *continued* to be used, as it had been for years, as a place of worship.” Mount Calvary at 669 (emphasis added).

The same cannot be said for the properties at issue herein because they were completely vacant and unimproved prior to and during the tax year in question. Consequently, these properties are similar to the one held non-exempt in Antioch Missionary Baptist Church v. Rosewell, *supra*, because this applicant *did not* have any prior history of actively using these properties for exempt purposes. Hence, unlike

5. That version (which for present purposes is substantially identical to Section 15-40) was found in Section 19.2 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, ¶¶ 482-811, 500.2.

Mount Calvary, it cannot be presumed that applicant would have *continued* to use said properties as a place of worship if not for the incapacity of its minister. Therefore, Antioch Missionary Baptist Church, and not Mount Calvary, is controlling herein.

The fact that applicant intended to develop the subject properties for use as a church complex throughout 1998 does not alter the above conclusion. That intent is certainly relevant herein because applicant's developmental efforts must be viewed in light of its ultimate intended use. Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 834 (3rd Dist., 2000). However, the determinative factor for ascertaining conformity with the statutory exempt use requirement is actual, and not intended, use. Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994).

Applicant held only one prayer service on the subject properties during 1998. Thus, any actual "religious use" applicant made of said properties was incidental to the non-exempt uses associated with their vacant and unimproved condition. More importantly, the fact that the subject properties were used as a neighborhood parking lot creates doubts as to whether applicant or the public at large was the primary user of said properties.

Applicant exacerbated these doubts by failing to take any steps that would have demarcated the subject properties for its own use throughout the tax year in question. Because the law mandates that all doubtful matters be resolved in favor of taxation (People ex rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*), applicant has failed to prove that the subject properties

were in exempt use, as required by Section 15-40, during the 1998 assessment year. Therefore, the Department's determinations denying said properties exemption from 1998 real estate taxes under that provision should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Cook County Parcel Index Numbers 16-14-106-017 and 16-14-106-019 not be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

June 21, 2001

Date

Alan I. Marcus
Administrative Law Judge